84585-9

No. 36346-1-II

COURT OF APPEALS, DIVISION II

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RENE P. PAUMIER

Appellant.

APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR MASON COUNTY

The Honorable Toni A. Sheldon, Judge
Cause No. 07-1-00060-7

BRIEF OF RESPONDENT

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2. The trial court committed reversible error by failing to permit the appellant to represent himself at trial without first engaging in a colloquy.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Was Paumier's right to a public trial violated when: (a) the courtroom itself was never closed to the public; (b) four jurors went into chambers with all parties and stated on the record their personal concerns about serving; and (c) one of the jurors had a serious medical issue that would have been inappropriate to discuss publicly?

2. Did the trial court err in not allowing Paumier to proceed pro se when his request was (a) not unequivocal and came: (b) after the jury had been selected; (c) motions in liminae had been heard; (d) other preliminary matters addressed; and (e) testimony was about to begin?

C. EVIDENCE RELIED UPON

The official Report of Proceedings will be referred to as "RP." The Supplemental Report of Proceedings will be referred to as "SUPP-RP." The Partial Report of Proceedings shall be referred to as "P-RP." The Clerk's Papers shall be referred to as "CP."

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D. STATEMENT OF THE CASE

1 & 2. Procedural History & Statement of Facts. Pursuant to RAP 10.3(b), the State accepts Paumier's recitation of the procedural history and facts and adds the following:

(a) Jury Selection

When reading the general instructions to the venire, the trial court judge concluded by stating:

> Lastly, if there is anything that is of a sensitive nature and you would prefer not to discuss it in this group setting, please let us know. And I make a list and we take those jurors individually into chambers to ask those questions because we don't intend to embarrass you in any way. SUPP-RP 9: 25; 10: 1-4.

When the trial court judge asked Juror No. 7 whether he/she was "comfortable" telling her in court about a "time problem and perhaps a physical limitation," that juror said, "I would like to go into chambers. It is pretty private." SUPP-RP 10: 5-10. The following was then noted:

> Juror No. 7 taken into chambers for questioning and the following is heard in the presence of all parties. SUPP-RP 11: 24-25.

Once in chambers, the following exchange occurred between Juror No. 7 and the judge:

> The Court: Juror No. 7, you indicated that you may have a time conflict and also a physical problem. And go ahead and tell me about those, please.

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> Juror No. 7: Okay, yesterday I got my first shot of insulin. I've just been diagnosed with diabetes and I have an appointment tomorrow. Otherwise, I would love to serve on a jury. SUPP-RP 12-1-7.

The trial court then excused Juror No. 7 and allowed him/her to reschedule their jury service for another time. SUPP-RP 12: 22; 13: 1-2. Two other jurors, Nos. 39 and 24, also went into chambers, but cited non-medical reasons regarding their concerns about their impartiality. SUPP-RP 13: 6; 15: 5-6.

While Juror No. 39 had been the victim of recent burglary and theft and also been involved as a property manager in apprehending criminals, No. 24 had concerns whether she lived close to the crime scene in Paumier's case. SUPP-RP 13: 18-25; 14: 1-7; 15: 11-12. After these matters were addressed in chambers, it was noted that:

> The Court and parties return to the courtroom and the following is heard in the presence of all parties and the jury venire. SUPP-RP 17: 12-14.

Later during voir dire, two jurors were taken into chambers; Nos. 24 again and 27. SUPP-RP 49: 4-6; 51: 12-14. In response to the trial court's questions about Juror No. 24's jury questionnaire, he/she admitted to having been convicted of possession of cocaine approximately 15 years earlier. SUPP- RP 49: 6-21. Juror No. 24 also told the trial court,

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"[t]hank you for calling me in here because it is so embarrassing." SUPP-RP 50: 5-6.

Conversely, Juror No. 27 thought that she recognized Paumier's name, and defendant Paumier stated in chambers that: "I do know you from Choice [High School]. I went to Choice for a while."" SUPP-RP 51: 19-21, 22-23. Before these two jurors were questioned, it was noted that they had been "taken into chambers for questioning and the following is heard in the presence of all parties." SUPP-RP 49: 4-6; 51: 12-14. Afterward, it was noted that: "[t]he Court and parties return to the courtroom and the following is heard in the presence of all parties and the jury venire." SUPP-RP 50: 24-25; 52: 21-23.

(b) Paumier's Pro Se Request

Following jury selection, motions in liminae, other preliminary matters and immediately before testimony was to begin on May 9, 2007, Paumier told the trial court that he wanted to proceed pro se. P-RP 9: 9. As Paumier stated:

> I just don't feel like a – I feel like there's things about the trial getting this far that it shouldn't have. And I feel that my attorney should have spoke up for me instead of getting pissed off at me in court. And I just don't feel like he's doing his job like he should. I don't feel it should have gotten this far, and I'd just rather present my, you know, case myself. P-RP 9: 9-15.

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Earlier in the proceedings when the trial court addressed Paumier's speedy trial issues, the following exchange occurred:

> The Court: All right. So, it's preserved for the record. It has been brought to the attention of Judge Sawyer, argued, and ruled upon. An unfavorable ruling was provided as to Mr. Paumier's motion, but it is preserved for the record. Any other preliminary matters?
>
> Mr. Paumier: I looked through the fucking rule; there's no way that they can fucking do that. I looked through it; there's no fucking grounds that they can--
>
> The Court: Mr. Paumier--
>
> Mr. Paumier: -- that – because the prosecutor wants to go on – fuck that.
>
> The Court: Mr. Paumier, I'm going to step down for a few moments; you'll take some time and talk with Mr. Sergi about the appropriate decorum or your actions in the courtroom. We will have approximately 30 or 40 community members coming in shortly, and you need to act appropriately in the courtroom. So, I'll step down for a few minutes so that can be discussed. P-RP 3: 9-25.

The jury found Paumier guilty of residential burglary and theft in the third degree, and he was sentenced on May 21, 2007. CP 23-25; RP 1: 1-6.

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3. Summary of Argument

Paumier's right to a public trial was not violated because: (a) the courtroom itself was never closed to the public; (b) four jurors went into chambers with all parties and stated on the record their personal concerns about serving; and (c) one of the jurors had a serious medical issue that would have been inappropriate to discuss publicly. Juror No. 7 specifically asked the trial court to hear his/her concerns in chambers, as he/she had recently been diagnosed with diabetes. Forcing Juror No. 7 to disclose his/her medical condition in open court would have violated his/her rights under 45 CFR 164.502(b)-Uses and disclosures of protected health information: general rules-Health Insurance Portability and Accountability Act (HIPAA) of 1996.

Additionally, Juror No. 24, who had prior felony conviction from 15 years earlier, appreciated not having to discuss her criminal history in open court. That the door to the trial court's chambers may have been closed is not equivalent to the courtroom itself being closed to the public, as Division 1 reasoned in State v. Momah. Jurors should not have to face embarrassment or humiliation in open court when a defendant's constitutional rights can be upheld by conducting voir dire on the record in chambers with all parties present. Because the State Supreme Court has set oral argument on this issue in State v. Strode, No. 80849-0, for

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February 14, 2008, the State asks for a stay pending review should this Court decide that the Bone-Club factors do apply.

Similarly, the trial court did not err in not allowing Paumier to proceed pro se because his request (a) was not unequivocal and came: (b) after the jury had been selected; (c) motions in liminae had been heard; (d) after other preliminary matters had been addressed; and (e) testimony was about to begin. The trial court retains wide discretion on whether to allow a defendant to proceed pro se and did not err in Paumier's case by denying his equivocal request. The judgement and sentence of the trial court is complete, correct and should be affirmed.

E. ARGUMENT

1. PAUMIER'S RIGHT TO A PUBLIC TRIAL WAS NOT VIOLATED BECAUSE:
   (a) THE COURTROOM ITSELF WAS NEVER CLOSED TO THE PUBLIC;
   (b) FOUR JURORS WENT INTO CHAMBERS WITH ALL PARTIES AND STATED ON THE RECORD THEIR PERSONAL CONCERNS ABOUT SERVING; AND
   (c) ONE OF THE JURORS HAD A SERIOUS MEDICAL ISSUE THAT WOULD HAVE BEEN INAPPROPRIATE TO DISCUSS PUBLICLY.

Paumier's right to a public trial was not violated because: (a) the courtroom itself was never closed to the public; (b) four jurors went into chambers with all parties and stated on the record their personal concerns

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about serving; and (c) one of the jurors had a serious medical issue that would have been inappropriate to discuss publicly.

Whether a trial court procedure violates the right to a public trial is a question of law that is reviewed de novo. State v. Duckett, ---P.3d---, 2007 WL 4171222 at 2 (November 27, 2007, Wash.App.Div. 3). Article I, section 22 of the Washington State Constitution guarantees criminal defendants the right to a speedy, public trial. State v. Momah, 171 P.3d 1064, 1065 (November 13, 2007, Wash.App.Div. 1); see State v. Duckett, 2007 WL 4171222 at 2. Similarly, article I, section 10 provides that '[j]ustice in all cases shall be administered openly...' Momah, 171 P.3d at 1065; see State v. Easterling, 157 Wash.2d 167, 174, 137 P.3d 825 (2006). These rights extend to jury selection, which is essential to the criminal trial process. Momah, 171 P.3d at 1065; see In re Pers. Restraint of Orange, 152 Wash.2d 795, 804, 100 P.3d 291 (2004).

To protect these rights, a court faced with a request for trial closure must weigh five factors, known as the Bone-Club factors, to balance the competing constitutional interests. Momah, 171 P.3d at 1065; see State v. Bone-Club, 128 Wash.2d 254, 258-259, 906 P.2d 325 (1995). The five Bone-Club factors are:

> 1. The proponent of closure or sealing must make some showing [of a compelling interest], and where that need is based on a right other than an accused's right to a fair

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trial, the proponent must show a 'serious and imminent threat' to that right;

2. Anyone present when the closure motion is made must be given an opportunity to object to the closure;

3. The proposed method for curtailing open access must be the least restrictive means available for protecting the threatened interests;

4. The court must weigh the competing interests of the proponent of closure and the public; and

5. The order must be no broader in its application or duration than necessary to serve its purpose. Bone-Club, 128 Wash.2d at 258-259.

To overcome the presumption of openness, the party seeking closure must show an overriding interest that is likely to be prejudiced and that the closure is narrowly tailored to serve that interest. Momah, 171 P.3d at 1065. The trial court must consider the alternatives and balance the competing interests on the record. This test mirrors the one articulated by the United States Supreme Court to protect the Sixth Amendment right to a public trial and the First Amendment right to open hearings. We look to the plain language of the closure request and order to determine whether closure occurred, thus triggering the Bone-Club factors. Momah, 171 P.3d at 1066.

Once the reviewing court determines there has been a violation of the constitutional right to a public trial right, '[p]rejudice is presumed' and

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a new trial is warranted. On the other end of the spectrum from a full closure is a trial court's inherent authority and broad discretion to regulate the conduct of a trial. Thus, a 'closure' in which one disruptive spectator is excluded from the courtroom for good cause will not violate the defendant's right to a public trial even absent an analysis of the Bone-Club factors. Likewise, limited seating by itself is insufficient to violate the defendant's public trial right.

When using or disclosing protected health information or when requesting protected health information from another covered entity, a covered entity must make reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. 45 CFR 164.502(b)-Uses and disclosures of protected health information: general rules-Health Insurance Portability and Accountability Act (HIPAA) of 1996.

Two cases, Momah and Duckett, issued by Divisions 1 and 3 on November 13 and 27, 2007 respectively, are comparable to Paumier's case because they squarely address the issue of voir dire in terms of public trial rights. In Momah, the defendant was charged with multiple sex crimes. Momah, 171 P.3d at 1065. Due to the nature of the charges and the extensive media coverage, a large number of potential jurors were called for voir dire by the parties and the trial court. Some of the potential jurors

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asked to be questioned individually, and the court and both counsel agreed to honor those specific requests. Some jurors had been exposed to media coverage about the case, also requiring individual juror questioning to avoid jury contamination.

On the second day of voir dire, the trial court had 52 potential jurors that needed to be examined further, as 48 of them had been excused the previous day. Momah, 171 P.3d at 1066. The trial court informed all parties that it had a list of eight jurors who wanted private questioning, and both the prosecution and defense agreed that this should occur. The trial court then divided the prospective jurors who were to be questioned individually into two groups, the first group of 20 to be questioned that morning. The rest were released with instructions to return for questioning that afternoon.

Shortly after the second group of potential jurors had been released, the record reflects that the trial court, the prosecution, defense, defendant Momah and the court reporter moved into chambers adjoining the presiding courtroom. Once in chambers, the record states:

> We have moved into chambers here. The door is closed. We have the court reporter present, as well as all counsel and the defendant, along with the Court and juror number 36...Momah, 171 P.3d at 1066-1067.

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Following questions by counsel and the court, prospective juror number 36 left chambers and prospective juror number 2 entered chambers. Momah, 171 P.3d at 1067. The record does not reflect whether the door to chambers was closed during this questioning or subsequent individual questioning of the prospective jurors during the morning session. During the afternoon session, the individual questioning continued with the second group of prospective jurors in a similar manner. A jury was empanelled, the trial occurred, and defendant Momah was found guilty of rape and indecent liberties. Momah, 171 P.3d at 1064-1065.

On appeal, defendant Momah made two main arguments: (1) The record establishes that the trial court closed voir dire, infringing on his right to a public trial; and (2) the record supports his view that the burden of proving there was no closure and that the requirements of Bone-Club and its progeny were fulfilled and shifted to the State. Momah, 171 P.3d at 1067.

Division 1 of the Court disagreed with both of defendant Momah's arguments. Per the Court, nowhere in the record is there any evidence that the trial judge expressly closed voir dire to the public or press in violation of any of the controlling cases. Rather, the record expressly shows that the trial court, in response to the express request of defendant Momah,

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agreed to allow voir dire by individual questioning of prospective jurors who indicated prior knowledge about the case.

Significantly, defendant Momah's request was based on the concern that prospective jurors might have knowledge about the case that could disqualify them, or that they might contaminate the rest of the prospective jurors with such knowledge. In addition, the trial court and the parties agreed to individually question jurors in response to their express requests. Per the Court, there is simply no indication in the record that the individual questioning was for the purpose of excluding either the press or the public from the trial. The Court also reasoned that the nothing in the record indicates that any member of the public, including defendant Momah's family, or the press was excluded from voir dire. The record is also devoid of any mention that either the press or the public attempted to gain admittance to witness voir dire.

In looking at the plain-language of the transcript, the Court reasoned that no statement or order by the trial court triggered the application of the Bone-Club factors or shifted the burden to the State to prove that the proceeding was open. Momah, 171 P.3d at 1068. Instead, the Court reasoned that a proceeding is not automatically closed to the public if it occurs in chambers and stated:

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> [A] 'door' to a courtroom being closed, which occurs in most proceedings, is not the same as a 'proceeding' in that courtroom being closed to the public. Momah, 171 P.3d at 1069.

To the extent that Frawley holds that all in-chambers proceedings are per se closed to the public, Division 1 of the Court declined to follow Division 3's reasoning in that case. See State v. Frawley, 140 Wash.App. 713, 167 P.3d 593 (2007).

Division 3 of the Court in State v. Duckett, by contrast, held that defendant Duckett's right to a public trial was violated because the trial judge never advised him of his right to a public trial, nor asked him to waive this right. Duckett, 2007 WL 4171222 at 6.

In Duckett, the State charged the defendant with multiple sex crimes and one count of burglary in the first degree. Duckett, 2007 WL 4171222 at 1. The case proceeded to trial in Spokane County Superior Court, and the trial judge told the prospective jurors that they would be provided with a questionnaire containing 'some questions that are somewhat of a personal nature.' Specifically, the questionnaire asked two questions concerning the prospective jurors' experiences with sexual abuse. The trial judge told the jurors that the questionnaires would be filed in the court file under seal and would not be accessible to anyone without a court order.

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The trial court told defendant Duckett and his attorney that follow-up questioning of those jurors whose questionnaire responses indicated some experience with sexual abuse would take place outside the courtroom stating, "I generally do it in my jury room, Counsel, so as to maintain some privacy." A total of 16 jurors were apparently questioned in chambers, although the record did not contain any transcript of this voir dire. Defendant Duckett waived his right to be present during this questioning. A jury was selected and empanelled, and following a two-day trial Duckett was found guilty of rape in the second degree. Duckett, 2007 WL 4171222 at 2.

On appeal, Division 3 reversed defendant Duckett's conviction, reasoning that the guaranty of open criminal proceedings extends to 'the process of juror selection,' which 'is itself a matter of importance, not simply to the adversaries but to the criminal justice system.' Duckett, 2007 WL 4171222 at 5, Quoting Press-Enter. Co. v. Superior Court, 464 U.S. 501, 505, 104 S.Ct. 819, 78 L.Ed.2d 629 (1984). The Court reasoned that while only a limited portion of voir dire was held outside the courtroom, the trial court was required to engage in a Bone-Club analysis.

As the State Supreme Court recognized in Orange and Easterling, the guaranty of a public trial under our constitution has never been subject to a de minimus exception. Orange, 152 Wash.2d at 812-814; Easterling,

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157 Wash.2d at 180-181. Per Division 3, the closure in Duckett was deliberate and the questioning of the prospective jurors concerned their ability to serve; something that, per the Court, cannot be characterized as ministerial in nature or trivial in result.

Ultimately, Division 3 held that the trial court violated defendant Duckett's public trial right by conducting a portion of voir dire in chambers without first weighing the necessary factors. Duckett, 2007 WL 4171222 at 6. Prejudice is presumed, and the remedy is a new trial. Bone-Club, 128 Wash.2d at 261-262.

In Paumier's case, a Bone-Club analysis was not triggered because the trial court, under the holding of Momah, never closed the courtroom to the public. While limited voir dire occurred in chambers, all parties, including Paumier, were present. Although the judge asked Juror No. 7 whether he/she was "comfortable" telling her in court about a "time problem and perhaps a physical limitation," that juror said, "I would like to go into chambers. It is pretty private." SUPP-RP 5-9. In chambers, that juror told all the parties that he/she had just been diagnosed with diabetes. SUPP-RP 50: 5-6.

Juror No. 24 also had a private matter to discuss and told the trial court, "[t]hank you for calling me in here because it is so embarrassing" when referencing his/her conviction for possession of cocaine 15 years

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earlier. SUPP-RP 50: 5-6. Juror No. 27 and Paumier recognized each other from when Paumier had attended high school, and engaged in a brief exchange about that interaction while in chambers. SUPP-RP 51: 19-21, 22-23. Had Paumier not been in chambers and/or advised on the record as to his right to be present during this voir dire, then his right to a public trial probably would have been violated. As the record shows, both he and his attorney were present in chambers and actively participated in the voir dire process. As the Court in Momah correctly reasoned:

> [A] 'door' to a courtroom being closed, which occurs in most proceedings, is not the same as a 'proceeding' in that courtroom being closed to the public. Momah, 171 P.3d at 1069.

Unlike Bone-Club, where the judge actually cleared the courtroom by ordering, "[a]ll those sitting in the back" to "please excuse yourselves at this time," the trial court in Paumier's case simply conducted voir dire in chambers with a few jurors to discuss matters that were inappropriate to address in front of the venire and public in open court. Bone-Club, 128 Wash.2d at 256. Under HIPAA, it would have been inappropriate to force Juror No. 7 to disclose his/her medical condition publicly. 45 CFR 164.502(b)(1996). Although Division 3 held in Duckett that even limited voir dire outside the courtroom triggered a Bone-Club analysis, that

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rationale is unreasonable when applied to Paumier's case considering Division 1's opinion in Momah.

Had the trial court in Paumier's case even ordered a single, non-disruptive person out of the courtroom, then Bone-Club could have been triggered and his argument here might have greater weight. Instead, the trial court did not err by conducting voir dire in chambers with a limited number of jurors to discuss medical and personal issues that could have tainted the entire venire. The trial court was correct in not forcing these jurors into an embarrassing or humiliating situation in public when Paumier's constitutional rights were upheld by conducting voir dire in chambers. This rationale is supported by Juror No. 7's request to go in chambers to tell the court about his/her diabetes, and Juror No. 24 expressing thanks at not having to reveal her 15 year-old felony conviction in open court. Paumier received a public trial, and the judgement and sentence in his case is complete, correct and should be affirmed.

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2. THE TRIAL COURT DID NOT ERR IN NOT ALLOWING PAUMIER TO PROCEED PRO SE BECAUSE HIS REQUEST
   (a) WAS NOT UNEQUIVOCAL, AND CAME:
   (b) AFTER THE JURY HAD BEEN SELECTED;
   (c) MOTIONS IN LIMINAE HAD BEEN HEARD;
   (d) AFTER OTHER PRELIMINARY MATTERS HAD BEEN ADDRESSED; AND
   (e) TESTIMONY WAS ABOUT TO BEGIN.

The trial court did not err in not allowing Paumier to proceed pro se because his request (a) was not unequivocal and came: (b) after the jury had been selected; (c) motions in liminae had been heard; (d) after other preliminary matters had been addressed; and (e) testimony was about to begin.

The United States Supreme Court recognizes a constitutional right of criminal defendants to waive assistance of counsel and to represent themselves at trial. State v. DeWeese, 117 Wn.2d 369, 375, 816 P.2d 1 (1991). A court cannot force a defendant to accept counsel if the defendant wants to conduct his or her own defense, as the Sixth Amendment grants defendants the right to make a personal defense with or without the assistance of an attorney. DeWeese, 117 Wn.2d at 375; see Faretta v. California, 422 U.S. 806, 45 L. Ed. 2d 562, 95 S. Ct. 2525 (1975). The right to representation by counsel of choice is, however, limited in the interest of both fairness and efficient judicial administration.

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DeWeese, 117 Wn.2d at 375; see U.S. v. Wheat, 486 U.S. 153, 159, 100 L. Ed. 2d 140, 108 S. Ct. 1692 (1988).

A defendant may not manipulate the right to counsel for the purpose of delaying and disrupting trial. DeWeese, 117 Wn.2d at 379; see State v. Johnson, 33 Wn.App. 15, 22, 651 P.2d 247 (1982). Self-representation is a grave undertaking, one not to be encouraged. DeWeese, 117 Wn.2d at 379. Its consequences, which often work to the defendant's detriment, must nevertheless be borne by the defendant. When a criminal defendant chooses to represent himself and waive the assistance of counsel, the defendant is not entitled to special consideration[,] and the inadequacy of the defense cannot provide a basis for a new trial or an appeal.

When a mid-trial request for self-representation is presented the trial court shall inquire Sua Sponte into the specific factors underlying the request. State v. Fritz, 21 Wn.App.354, 363, 585 P.2d 173 (1978). Among other factors to be considered by the court in assessing such requests made after the commencement of trial are the quality of counsel's representation of the defendant, the defendant's prior proclivity to substitute counsel, the reasons for the request, the length and stage of the proceedings, and the disruption or delay which might reasonably be expected to follow the granting of such a motion. Having established a

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record based on such relevant considerations, the court should then exercise its discretion and rule on a defendant's request.

The request or demand to defend pro se must be knowingly and intelligently made. State v. Breedlove, 79 Wn.App. 101, 106, 900 P.2d 586 (1995). The request must be unequivocal and it must be timely, i.e., it may not be used to delay one's trial or obstruct justice. The [Washington] cases which have considered the timeliness of a proper demand for self-representation have generally held that...if made during trial, the right to proceed pro se rests largely in the informed discretion of the trial court. Breedlove, 79 Wn.App. at 107.

The facts of Fritz are analogous to Paumier's case, because they involve a defendant who demanded to proceed pro se. On the day set for trial, defendant Fritz "unequivocally demanded to represent himself pro se." Fritz, 21 Wn.App. at 364. The trial court denied that request and later made findings that although defendant Fritz was competent to stand trial, "he was not competent to intelligently waive counsel or to act as his own counsel." Due to defendant Fritz's having previously "fled the state" prior to his first trial date, obtained "a substitution of counsel and continuance on the eve" of his second one, and "on the morning of the third date...sought to discharge his new attorney, represent himself and

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obtain yet another continuance," the Court reasoned that the trial court had the discretion to deny the defendant's motion. Fritz, 21 Wn.App. at 365.

As did the trial court in Fritz, the judge in Paumier's case correctly reasoned that his request to go pro se simply came too late in the proceedings, as the jury had already been selected, motions in liminae had been heard and testimony was about to begin. Paumier's request was also far from unequivocal, as he explained to the trial court that "I'd just rather present my, you know, case myself." P-RP 9: 91-5. There is nothing in the record that shows Paumier repeatedly renewed his request during the trial and/or ever unequivocally demanded to represent himself. Had any of these things occurred, then a deeper analysis of his demand should have happened. Because all Paumier expressed was an equivocal interest to represent himself before the start of testimony, the trial court properly exercised its discretion and denied his request. No error occurred.

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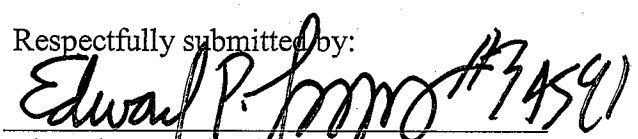
F. CONCLUSION

The State respectfully requests that the judgment and sentence of the trial court be affirmed.

Dated this 14TH day of JANUARY, 2008

Respectfully submitted by:



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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,	)	
	)	No. 36346-1-II
Respondent,	)	
	)	DECLARATION OF
vs.	)	FILING/MAILING
	)	PROOF OF SERVICE
RENE P. PAUMIER,	)	
	)	
Appellant,	)	
	)	

I, EDWARD P. LOMBARDO, declare and state as follows:

On MONDAY, JANUARY 14, 2008, I deposited in the U.S. Mail, postage properly prepaid, the documents related to the above cause number and to which this declaration is attached, BRIEF OF RESPONDENT, to:

Andrew P. Zinner
Nielsen, Broman & Koch
1908 East Madison
Seattle, WA 98122

I, EDWARD P. LOMBARDO, declare under penalty of perjury of the laws of the State of Washington that the foregoing information is true and correct.

Dated this 14TH day of JANUARY, 2008, at Shelton, Washington.

Edward P. Lombardo, WSBA #34591

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